

Group II: claims 31-51, drawn to a device product, classified in class 257, subclass 69.

The Office argues that Groups I and II are distinct because the product as claimed can be made by another and materially different method, e.g., a process that does not include the steps of providing a silicon layer, providing a patterned mask over the silicon layer, etching the silicon layer with a plasma gas comprising Cl₂, HBr, O₂, and Ar, and removing the pattern mask.

Applicant elects, with traverse, to prosecute the invention of Group I, claims 1-30.

Applicant does NOT traverse the Office's classification of the groups of inventions as distinct, merely the reasoning behind the Office's classification.

As to restriction between Groups I and II, Applicant disagrees that the Office has met its burden of showing that the product as claimed can be made by the other and materially different method. The Office merely alleges that the "other and materially different method" is one not including the claimed steps. MPEP § 806.05(f), however, requires that the Office's burden is to describe the "other and materially different method." The Office has merely described what this other method is **NOT**. The Office has not described what the other process **IS**. In other words, the Office has only described the process in the negative. But this does not meet the Office burden (e.g., by positively detailing the steps of this "other method").

As well, the Office has not satisfied the criteria for establishing a proper restriction requirement. MPEP § 803 describes two criteria necessary for a proper restriction requirement: (A) the inventions must be independent or distinct as claimed; and (B) there must be a serious burden on the examiner if restriction is required. See MPEP § 803 ¶ 3 (emphasis added). The Office, however, has not substantiated—much less alleged—that there exists a serious burden. As well, for the reasons above, the Office has not provided sufficient basis for the inventions to

be categorized as distinct. Having not substantiated that both of these criteria exist, the Office has not established a proper restriction requirement.

For these reasons, the Office has not established a proper restriction requirement between Groups I and II.

Conclusion

For the above reasons, Applicant respectfully requests the Office to withdraw the restriction requirement and examine the pending claims.

If there is any fee due in connection with the filing of this Response, including a fee for any extension of time not accounted for above, please charge the fee to our Deposit Account No. 18-0013.

Respectfully Submitted,

By 

KENNETH E. HORTON
Reg. No. 39,481

Date: May 16, 2002